

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

|  |   |                           |
|--|---|---------------------------|
| Latwan Marquis Toms,                           | ) | C/A No. 4:09-2578-JFA-TER |
|  | ) |                           |
|  | ) |                           |
| Plaintiff,                                     | ) |                           |
|  | ) |                           |
|  | ) | ORDER                     |
| vs.  | ) |                           |
|  | ) |                           |
| Cherokee County Sheriff's Office; Gaffney      | ) |                           |
| Police Department; PTL Dop. Chris Blake, Cpt.  | ) |                           |
| David Oglesby; any other entity of above named | ) |                           |
| defendants,                                    | ) |                           |
|  | ) |                           |
| Defendants.                                    | ) |                           |
|  | ) |                           |

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The *pro se* plaintiff, Latwan Marquis Toms, brings this action pursuant 42 U.S.C. § 1983 alleging that the defendants violated his constitutional rights and subjected him to excessive force during an arrest.

The Magistrate Judge assigned to this action<sup>1</sup> has prepared a thorough Report and Recommendation and opines that the complaint should be dismissed for failure to prosecute, in accordance with Rule 41(b) of the Federal Rules of Civil Procedure. In addition, the Magistrate Judge has considered the Fourth Circuit's four-prong test<sup>2</sup> in determining his

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<sup>1</sup> The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b)(1).

<sup>2</sup> *Davis v. Williams*, 588 F.2d 69 (4th Cir. 1978); see also *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989); and *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982).

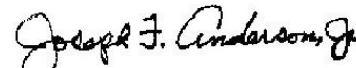
recommendation that the action should be dismissed. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The defendants filed a motion for summary judgment and the court advised the plaintiff in a *Roseboro* order of the importance of his adequate response to the motion. *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975). Plaintiff did not respond.

The plaintiff was further advised of his right to file objections to the Report and Recommendation, which was entered on the docket on July 30, 2010. However, the plaintiff did not file any objections to the Report within the time limits prescribed. It appears that plaintiff has abandoned his lawsuit as to these defendants.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed with prejudice for failure to prosecute under Rule 41(b) and any outstanding motions are deemed moot.

IT IS SO ORDERED.



Joseph F. Anderson, Jr.  
United States District Judge

September 20, 2010  
Columbia, South Carolina